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**DEC 20 2006**  
**OFFICE OF PETITIONS**

In re Application of  
Michael Wand et al.  
Application No. 10/038,054  
Filed: January 3, 2002  
Attorney Docket No: **61297-318422**

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b)<sup>1</sup>, filed November 28, 2006, to revive the above identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)". This is **not** a final agency decision.

This application became abandoned for failure to timely pay the issue fee in response to the Notice of Allowance mailed April 27, 2006. The large entity issue fee was paid July 28, 2006 however after the due date and thus the application was properly abandoned and accordingly, a Notice of Abandonment was mailed November 16, 2006.

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<sup>1</sup>Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The instant petition is accompanied by a fee in the amount of \$750.00 representing the small entity fee for a petition to revive. However, a review of the file reveals that this application is a large entity and therefore the fee paid should have been in the amount of \$1500.00.

Pursuant to 37 CFR 1.137(b) however, the instant petition lacks item (2) of the regulation. Effective October 1, 2004 the petition fee was set at \$1500 for a large entity and \$750 for a small entity. In view thereof, the balance of the petition fee (\$750.00) is due before a petition on the merits can be addressed and granted. The application will therefore remain in an abandoned status until such time as the petition fee has been paid.

Further correspondence with respect to this matter should be addressed as follows:

By mail:      Mail Stop Petitions  
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                  P.O. Box 1450  
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By FAX:      (571) 273-8300

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.



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